

A similar statement of the law is contained in p 1392 of *Rayden on Divorce*, 14th Ed, Vol I.

The petitioner had proved to my satisfaction that the respondent and the co-respondent committed adultery on 9 October 1987: thus the decree nisi granted on 7 July 1988. However, in an affidavit filed on 10 November 1988 by the respondent in relation to the ancillary matters, the respondent stated that there was unhappiness between the petitioner and the respondent even before the respondent was introduced to the co-respondent as the petitioner wanted to 'cage-up' the respondent. The parties often quarrelled and the respondent had in fact left the matrimonial home on three occasions between 1985 and 1987. The respondent also stated that her relationship with the petitioner was strained even more when she started to work in April 1987. The co-respondent was then a good friend of the family. The respondent said the co-respondent 'had nothing to do with the strained relationship between the petitioner and (the respondent) and (the co-respondent) in fact sought to reconcile the petitioner and (the respondent) whenever (the respondent) left the matrimonial home'. The last straw was an incident which occurred on 16 September 1987 when the petitioner and the respondent quarrelled over the respondent working overtime and he accused her of having extra-marital affairs and chased the respondent with a chopper. Fearing for her life, the respondent left the matrimonial home and resolved never to return. The respondent said that the 'marriage was dead long before the adultery' and thus she allowed the petition to proceed on an uncontested basis. No affidavit in reply has been filed by the petitioner to dispute what is said by the respondent. Neither has the petitioner made any request to me for time to file an affidavit in reply. In the circumstances and on the facts now before me, I do not think I ought to condemn the co-respondent in costs.

In the result I am not granting any order in respect of both the ancillary prayers of the petitioner.

Solicitors: *Loganathan & Co; Ganesan Carlose & Partners.*

Reported by *Ng Sheau Jiuan*

A Peter Ralph Grossey v The Chartered Bank

HIGH COURT (SINGAPORE) – SUIT NO 3141 OF 1984
RAJAH J
18 NOVEMBER 1988

Banking – Current account – Overdraft against marketable securities – Bearer securities – Notice of redemption – Whether part of banking business – Wang bonds – Difference in converted value and face value – Claim by plaintiff

The plaintiff was at all material times a customer of the defendant bank ('the bank') with which it maintained a current account on which it had advanced to him various sums of money from time to time by way of overdraft against marketable securities lodged with it by the plaintiff. The plaintiff said that he discussed with Northrop, an officer of the bank, in April 1982 the possibility of offering convertible bearer bonds as security for credit facilities by the bank. At that time as indeed of now, in respect of Eurobonds, which are internationally traded securities, the major part of Eurobond clearing and settlement was and is conducted through two centralized clearing systems, namely, Euro-clear in Brussels and CEDEL in Luxembourg. Each of the two systems provided an efficient, risk-free settlement system for internationally traded securities, avoiding the costs and delays caused by physical delivery of certificates. Participants in both systems had to be institutions. The plaintiff's evidence is that as a result of the discussions, agreement between the bank and himself was reached, culminating in a letter dated 12 April 1982 from the bank to himself (AB4) which, *inter alia*, reads:

(1) Further to our recent discussions we are pleased to advise that our London merchant bank, Standard Chartered Merchant Bank Ltd ... are members of the Euro-clear System and can act as custodian for the various loan stocks to be held as security for your facilities in Singapore...

(3) Please arrange for the securities to be delivered free of payment to Standard Chartered Merchant Bank Ltd, London ... It will be necessary for us to furnish our associates with your full name and residence status and your interest payment instructions. You should also let us know by whom the various securities will be delivered. Please advise accordingly.'

The plaintiff's evidence is that on the Saturday following AB4 of 12 April 1982 or the Saturday after that Northrop asked him to cancel the arrangements as had been set out in para 3 of AB4, that is to say, to deliver the bond securities to the Standard Chartered Merchant Bank in London, and told him to have the said bearer bonds physically transferred to the bank in Singapore. As a result of this the plaintiff countermanded the order to his agent in England to have the bearer bonds placed with the Standard Chartered Merchant Bank in London and instead asked his agent to have the convertible bearer bonds sent on to the bank in Singapore. In the event some of the bonds came to him, which he handed over to the bank as and when they arrived, while others went direct to the bank. The plaintiff's view of the bank's change of mind is that it seemed to him that the bank would and should know what it was doing and that perhaps Northrop had found out more from London of how the bank could deal from Singapore with the situation. On this issue the bank's evidence as deposed to by Northrop (DW1) and supported by Chee Kok Kee (DW2), the officer in charge of the securities department of the bank, was to the effect that at no time did Northrop countermand para 3 of AB4 and that it was the plaintiff who of his own volition had decided that the

services of the Standard Chartered Merchant Bank in London was not to be used, perhaps because of income tax reasons.

The question is whether the learned judge should accept the evidence of the plaintiff or that of Northrop as supported by Chee. The bank submitted that it is not part of 'banking business' as defined in s 2 of the Banking Act (Cap 19, 1985 Ed) to inform a customer of the notice of redemption of bearer securities held by them and consequently its failure to inform the plaintiff of the notice of redemption of the Wang bonds was not part of banking business. The bank also relied on the following exemption clause: '... nor is the bank responsible for any loss that may be incurred by bonds or coupons not being duly presented when drawn or due; all requisite notices in this connection and in connection with rights, bonuses or entitlements to convert in respect of any bonds or shares should be given to the bank by customers ...'.

The plaintiff says that had he redeemed the Wang bonds on 27 May 1983, the date of redemption, by converting them to shares he would have received the sum of US\$84,650 being the value of the converted shares. As it was, he only received US\$56,445, the face value of the convertible Wang bonds. The plaintiff is now claiming US\$28,205 being the difference in value of the converted shares and the face value of the Wang bonds.

Held, allowing the claim with costs:

(1) Taking into account the circumstances in which these Wang convertible bonds were accepted by the bank as collateral for the overdraft account, it lies ill in the mouth of the bank for it now to say that it is not part of its business to inform the plaintiff, a customer, of the notice of redemption of the Wang bonds held by it as security. The bank should not be heard to say that the relaying of such information to its customers is not part of its banking business.

(2) The condition relied upon by the bank as exempting it from liability is ineffective and unenforceable against the plaintiff by the bank.

(3) The bank did not exercise due care (a) in not taking the necessary steps to place itself in a position to ascertain when the notice of redemption was given by the Wang company, and (b) thus disabling itself from informing the plaintiff of such notice which would have made it possible for him to convert the bearer bonds to registrable shares in the Wang company. The bank was thus in breach of its duty of care in respect of the deposited Wang convertible bearer bonds to its customer the plaintiff.

(4) There will therefore be interlocutory judgment for the plaintiff on his claim with costs, the question of the assessment of damages suffered by the plaintiff being referred to the registrar. Damages suffered by the plaintiff shall be the difference in the value of the converted shares and the face value of the Wang convertible bonds.

Cases referred to

- 1 *Curtis v Chemical Cleaning & Dyeing Co* [1951] 1 KB 805 (refd)
- 2 *Mendelssohn v Normand Ltd* [1970] 1 QB 177 (refd)

HE Cashin for the plaintiff.

Dennis Singham for the defendant.

Cur Adv Vult

Rajah J: The defendant is a company incorporated in England with limited liability under a Royal Charter of

1853 with a registered branch office in Singapore carrying on, inter alia, a banking business and related financial services under licence issued by the competent authorities of Singapore. It was and is a member of the Standard Chartered Bank Group of which the Standard Chartered Merchant Bank Ltd, London ('SCMB') was also a member and it has been carrying on banking business and other related financial services in Singapore for well over a century. Section 2 of the Banking Act (Cap 19, 1985 Ed) defines 'banking business' as 'the business of receiving money on account or deposit account, paying and collecting cheques drawn by or paid in by customers, the making of advances to customers, and includes such other business as the Authority may prescribe for the purposes of this Act'.

The plaintiff, a citizen of the UK, was at all material times a customer of the defendant ('the bank') at its main office in Singapore since 1966, when he arrived in Singapore and where he has been resident since and is now a permanent resident.

The plaintiff is a businessman of standing in Singapore being involved in the affairs of a number of foreign international companies, of which he was and is a director. The plaintiff maintained with the bank a current account on which it has advanced the plaintiff various sums of money from time to time by way of overdraft against marketable securities lodged with it by the plaintiff.

On 5 February 1979 the bank wrote to the plaintiff as follows (AB1):

Banking arrangements

We advise that the total value of all your shares held by us to secure your guarantee and overdraft line amounts to S\$591,425. Under the terms of the banking facilities extended to you, our commitments under both lines of credit should not exceed 65% and 50% respectively of the current market value of the shares.

Your account is currently overdrawn to the extent of S\$65,281.27 and there is thus an overall shortfall in our security.

Under the circumstances, we shall be pleased if you will arrange to lodge further shares with us, or alternatively, reduce your overdraft to within the limit of S\$40,000.

We await your advice on the matter.

On 6 April 1979 the manager of the defendant wrote to the plaintiff as follows (AB2):

Banking arrangements

We have reviewed the banking arrangements currently made available to you and are pleased to advise that we have extended the credit line for a further period on the following terms and conditions, with a reduction in the level of the overdraft facility to conform with our normal margin requirements.

£75,000	For the issue of a guarantee favouring Lloyds. Counter indemnity to be held.
S\$7,700	For the issue of a guarantee to M/s Hock Seng Enterprises Pte Ltd. Counter indemnity to be held.
S\$30,000 (reduced from S\$40,000)	Overdraft facilities in current account. Interest will be levied at 1½% above our prime lending rate which is currently 8% pa. Changes in prime rate are notified to the press and featured on our counters and in current account statement.

Security

We hold marketable securities supported by blank transfers and a letter of lien. Our commitment under the guarantee lines should not at any time exceed 65% of the current market value of the shares deposited and 50% on the overdraft facility.

Subject to review on 30 April 1980.

We trust that the foregoing arrangements are satisfactory to you.

These arrangements, it would appear, continued until late November 1981 when Mr Northrop, the advances manager of the bank, wrote to the plaintiff on 23 November 1981 to the effect that it was time to review the banking arrangements as the quantum of his overdraft had increased and the cover for his facilities had eroded. To this the plaintiff responded on 7 December 1981 as follows:

Dear Mr Northrop,

Many thanks for your letter B467 of 23 November. I was aware that the cover for my facilities had eroded somewhat, and in fact am in the process of rearranging my assets to provide adequate cover. One of my difficulties is to determine which shares/bonds etc will be relatively immobile as it is, of course, awkward for both parties if the collateral is frequently changed. If you can bear with me a little longer I shall develop a plan which we can then discuss and agree – may I contact you again shortly on this? (AB3)

It is the plaintiff's evidence that in the course of a number of discussions with Northrop, he discussed with him sometime in April 1982 or thereabouts the possibility of offering convertible bearer bonds as security for credit facilities by the bank. The difficulty for the bank here it would appear was two-fold, (1) that as a holder of convertible bearer bonds the plaintiff's name would not appear in the register of the issuing company, and (2) that the bank as then organized would not be able to keep track of the notices of conversion as and when given by the various issuing companies.

At that time as indeed of now, in respect of Eurobonds, which are internationally traded securities, the major part of Eurobond clearing and settlement was and is conducted through two centralized clearing systems, namely, Euro-clear in Brussels and CEDEL in Luxembourg. Each of the two systems provided an efficient, risk-free settlement system for internationally traded securities, avoiding the costs and delays caused by

A physical delivery of certificates. Participants in both systems had to be institutions. Euro-clear was established in 1968 and at the end of 1986, Euro-clear had over 2,050 participants. (See p 590 of *International Finance and Investment* edited by Brian Terry (1987).)

B The plaintiff's agent in the UK in respect of his Eurobond holdings was a firm of stockbrokers by the name of Charlton Seal Dimmock & Co operating in Manchester, England ('agent'). Member banks of the Euro-clear System would hold the convertible bearer bonds on behalf of his agent. Interest coupons would be attached to these bonds and the institution holding the bonds would present these interest coupons to the Euro-clear System which would then collect the interest on the coupons and remit it to his agent on whose behalf the member institution would be holding the bonds. These interest payments collected on behalf of the plaintiff had always been remitted by his agent to Hongkong where the plaintiff had a bank account. As and when the companies issuing the convertible bearer bonds gave notices of redemption the issuing companies would inform the Euro-clear System who would then inform the custodian institution of such notices. The custodian institution in turn would inform the agent who would in turn inform the plaintiff of such notices. The plaintiff would finally instruct his agent as to what was to be done with the bearer convertible bonds.

F It was against this background that the feasibility of placing these convertible bearer bonds with the bank by way of security for the plaintiff's banking arrangements with it was discussed. What was discussed and finally agreed upon by the bank and plaintiff are crucial to this case.

G The plaintiff's evidence is that as a result of the discussions, agreement between the bank and himself was reached culminating in a letter dated 12 April 1982 from the bank to himself (AB4) which reads:

Banking facilities

H (1) Further to our recent discussions we are pleased to advise that our London merchant bank, Standard Chartered Merchant Bank Ltd, 33-36, Gracechurch Street, London EC3V 0AX are members of the Euro-clear System and can act as custodian for the various loan stocks to be held as security for your facilities in Singapore. Current charges are: For free delivery within Euro-clear System – US\$1.00 per security

Annual custodian charges

I Up to US\$500,000 = 0.5 per mile
Next US\$1,000,000 = 0.25 per mile
Next US\$23,500,000 = 0.2 per mile
Next US\$25,000,000 = 0.175 per mile
Above US\$50,000,000 = 0.15 per mile
(2) Fees are payable quarterly based on aggregate month end balances unless the amount involved warrants

annual billing only. Your current account will be debited with these charges automatically under advice.

- (3) Please arrange for the securities to be delivered free of payment to Standard Chartered Merchant Bank Ltd, London, clients accounts no 94632, attn: Mr Richard Southward. It will be necessary for us to furnish our associates with your full name and residence status and your interest payment instructions. You should also let us know by whom the various securities will be delivered. Please advise accordingly.

- (4) We attach a letter of lien in respect of these securities and would be pleased if you would sign where indicated.

Up till the writing of this letter the bank's evidence and that of the plaintiff run on parallel lines but after the last-mentioned letter their evidence diverge and become conflicting.

The plaintiff's evidence is that on the Saturday following AB4 of 12 April 1982 or the Saturday after that Northrop asked him to cancel the arrangements as had been set out in para 3 of AB4, that is to say, to deliver the bond securities to SCMB in London, and told him to have the said bearer bonds physically transferred to the bank in Singapore. As a result of this the plaintiff countermanded the order to his agent in England to have the bearer bonds placed with the Standard Chartered Merchant Bank in London and instead asked his agent to have the convertible bearer bonds sent on to the bank in Singapore. In the event some of the bonds came to him, which he handed over to the bank as and when they arrived, and others went direct to the bank. The plaintiff's view on the bank's change of mind is that it seemed to him that the bank would and should know what it was doing and that perhaps Northrop had found out more from London of how the bank could deal from Singapore with the situation. On this issue the bank's evidence as deposed to by Northrop (DW1) and supported by Chee Kok Kee (DW2), the officer in charge of the securities department of the bank, was to the effect that at no time did Northrop countermand para 3 of his letter of 12 April 1982 (AB4) and that it was the plaintiff who of his own volition had decided that the services of SCMB in London were not to be used, perhaps because of income tax reasons. On the tax question the factual position was that the plaintiff's agent had been previously remitting to Hongkong the interest derived from the bearer bonds and the plaintiff had always been paying Singapore income tax as a Singapore resident.

The question for me here is do I accept the evidence of the plaintiff or that of Northrop as supported by Chee Kok Kee. It is clear to me that the plaintiff had kept his convertible bearer bonds in the UK for the simple reason that he wanted these kept under conditions where he would come to know when these convertible bearer bonds would have to be converted to registered shares in the issuing companies. The point of an investment in

convertible bearer bonds is the investor's hope and expectation that at the notified date of conversion he would be in a situation whereby by converting to registered shares in the issuing company he would make a profit on his investment in the convertible bonds. The discussions between the bank and the plaintiff must have centred round the problem of how the then existing safe position of the plaintiff in regard to the conversion of the convertible bearer bonds could be accommodated to the bank's desire to have adequate physical control over its security. The bank's letter of 12 April 1982 (AB4) to my mind ideally solved the problem; the plaintiff would maintain his safe position regarding notification of conversion of the convertible bearer bonds and the bank for its part would maintain sufficient control and ability to liquidate the convertible bearer bonds should the need arise. In these circumstances it seems to me that it would have been sheer madness on the plaintiff's part for him of his own volition to cancel the agreed safe arrangements for him and have the convertible bearer bonds transferred to Singapore particularly in the light of the bank's continued assertion throughout the trial that it was organizationally not geared to meeting the notice of conversion requirement. I accept the plaintiff's statement that the reason for his going along with the bank's change of mind was his belief that the bank would have come to some arrangement with SCMB whereby the bank would have solved the difficulty of the notice of redemption. On reflection it was not such an intractable problem as to defeat the ingenuity of a respectable old established banking institution with connections in the city of London such as the defendants. All it had to do in my view was to identify the convertible bearer bonds to SCMB in London and the latter as members of the Euro-clear System could then have easily notified the bank of any notice of redemption affecting any of the bonds deposited with the bank by way of security whereupon the bank could have notified the plaintiff who could then have acted as suited him best. I have a feeling that the bank was fully alive to this possibility and that it was why it called for the physical transfer of the bearer convertible bonds to be placed with them in Singapore. This would have been a perfectly safe position for both parties had someone in the bank remembered to send SCMB in London the identifying information on the convertible bonds and had instructed them to notify the bank of any notice of conversion. This it would appear the bank failed to do thus enabling the situation, of which the plaintiff is now complaining, to arise. Yet again we know from the evidence before the court that one of the three newspapers which carried notices of redemption by arrangement with the Euro-clear System was and is *The Financial Times* of London of which the bank is an acknowledged subscriber. The bank had here yet another last opportunity of preventing loss on the conversion of the bonds. A daily perusal of *The Financial Times* would

have revealed the notice of redemption on Wang convertible bonds and thus led to appropriate action being taken thereafter both by the bank and the plaintiff. For these reasons I prefer the evidence of the plaintiff to that of Northrop and Chee Kok Kee and find that it was Northrop who countermanded para 3 of the bank's letter of 12 April 1982 (AB4) and asked the plaintiff to have the convertible bearer bonds sent on to the bank in Singapore, where they were to be used by the bank as security for the plaintiff's banking facilities which had already been made available to him by the bank.

Arising out of the banking arrangements made on 12 May 1982 (AB9) a number of securities reached the bank from time to time and on 20 August 1982 the bank gave the plaintiff an acknowledgement receipt (AB12 & AB13) worded as follows:

Securities

We acknowledge receipt of the undermentioned enclosures which we are retaining under lien as per list attached:

- US\$25,000 Moran Energy International NV 8% convertible subordinated debenture due 1995 (nos M13-M22, M215-M229)
- US\$50,000 Reading & Bates Energy Corporation NV 8% convertible subordinated debenture due 1995 (nos M1728, M2296-M2329, M53374-M53388)
- US\$50,000 Wang Laboratories (NA) NY 9¼% convertible subordinated guaranteed debenture due 1996 (nos 39728-39777)
- US\$50,000 Swiss Bank Corporation (Overseas) SA 6¼% convertible bonds due 31 December 1990 (nos 020006, 023824, 028539/541)
- US\$50,000 TNT Overseas Finance NV 8½% convertible guaranteed subordinated bonds 1990 (nos 02595-02644)

together with interest coupons which we shall send for collection when they are due.

Conditions

The bank, while receiving articles for the convenience of customers, does not take responsibility for their loss or damage by thieves, fire, explosion, war, riot or otherwise nor is the bank responsible for any loss that may be incurred by bonds or coupons not being presented when drawn or due, all requisite notices in this connection and in connection with rights, bonuses or entitlements to convert in respect of any bonds or shares should be given to the bank by customers. Notice of intention to withdraw items must be lodged with the bank during business hours on the day preceding that on which delivery is required.

With regard to this acknowledgement receipt the plaintiff deposited as follows:

AB12 (20.8.82) Condition – AB12 posted to me. Checked the list. Found one missing and wrote to them about it. I did not notice it. This is the standard form for ordinary shares. I would not have accepted the condition because there could have been a major danger. No one in the bank had drawn my attention to it specifically. I only read it when the bank drew my attention to it later after the dispute had arisen.

- A The defendant submitted that it is not part of 'banking business' as defined in s 2 of the Banking Act (Cap 19, 1985 Ed) to inform a customer of the notice of redemption of bearer securities held by them and consequently its failure to inform the plaintiff of the notice of redemption of the Wang bonds was not part of banking business.
- B I do not see how the bank, having accepted bearer convertible securities as collateral for securing the plaintiff's overdraft account with it, can now say that informing customers of such notices is not part of its banking business. If the lending of money to customers is banking business then surely the acceptance of security for such lending must also be part of banking business and if the bank accepts convertible bearer bonds as security for such lending then surely it is the bank's business to assist its customers in carrying out the terms of the convertible bonds and thus safeguard the customers' best interests.
- C Wang convertible bonds were accepted by the bank as collateral for the overdraft account, it lies ill in the mouth of the bank for it now to say that it is not part of its business to inform the plaintiff, a customer, of the notice of redemption of the Wang bonds held by it as security. If the giving of such notice is not to be deemed part of its banking business then the bank should never have accepted these bonds as security. In the circumstances I do not think that the bank should now be heard to say that the relaying of such information to its customers is not part of its banking business.

F By para 6 of the defence the defendant pleads that further and in the alternative the defendant will rely on the clause in the acknowledgment receipt given to the plaintiff on the deposit of the Wang Bonds dated 20 August 1982 which contains a clause the material words of which are:

- G ... nor is the bank responsible for any loss that may be incurred by bonds or coupons not being duly presented when drawn or due; all requisite notices in this connection and in connection with rights, bonuses or entitlements to convert in respect of any bonds or shares should be given to the bank by customers ...

H On this plea of the defendant the plaintiff contends (i) that the condition, if at all valid, was formulated on 20 August 1982 and can therefore form no part of the contract dated 12 May 1982 relating to the banking arrangements as set out in AB9, (ii) that the plaintiff only read the condition after the bank drew his attention to it later after the dispute had arisen; (iii) that the condition is not expressed clearly and without ambiguity, (iv) that the condition as pleaded denies the whole purpose of the contract of 12 May 1982 and would have defeated the purpose of depositing the convertible bearer bonds in the manner arranged.

The law on exemption clauses is succinctly stated in *Chitty on Contracts* (25th Ed) Vol 1 at pp 875-876 as follows:

Exemption clauses must be expressed clearly and without ambiguity or they will be ineffective. Mere general words in an exemption clause do not ordinarily absolve the party seeking to rely on the exemption from liability for his own negligence or that of his employees. The clause must clearly express what its intention is. (p 875)

... if a person was under a legal liability and wished to get rid of it he could only do so by using clear words. (p 876)

On the issue of when the plaintiff first had knowledge of the condition, I accept the plaintiff's evidence that he only read it later when the bank drew his attention to it after the dispute had arisen. On the plea of the bank that the exemption clause frees it of liability it is to be noticed that it relies on only a part of the clause and that part reads:

... nor is the bank responsible for any loss that may be incurred by bonds or coupons not being duly presented when drawn or due; all requisite notices in this connection and in connection with rights, bonuses or entitlements to convert in respect of any bonds or shares should be given to the bank by customers...

In my view the exemption clause we are concerned with must be read in its entirety and not in part as has been done by the bank. Reading it in its entirety one could come to the conclusion that this clause only applies to those instances 'while receiving articles for the convenience of customers', that is, in cases where the bank is a bailee pure and simple for their customers. Further the last paragraph of the acknowledgement receipt which reads:

Notice of intention to withdraw items must be lodged with the bank during business hours on the day preceding that on which delivery is required

fortifies my view that the condition was not intended to apply to securities deposited with the bank by way of collateral but to items left by customers for safekeeping. In the instant case the bearer bonds were deposited by the plaintiff with the bank by way of collateral in respect of his overdraft account with the bank and not merely for safekeeping but subject also to withdrawal from time to time on proper notice. On a reading of the condition as a whole I do not think that the condition as framed is applicable to the instant case nor is it enforceable against the plaintiff for the reason that it is not expressed clearly or without ambiguity.

For these reasons I hold that the condition relied upon by the bank as exempting it from liability is ineffective and unenforceable against the plaintiff by the bank (see *Curtis v Chemical Cleaning & Dyeing Co*¹ and *Mendelssohn v Normand Ltd*²). In any event I accept the defendant's submission that the condition, if at all valid, was

A formulated on 20 August 1982 (AB12) and can therefore form no part of the contract dated 12 May 1982 relating to the banking arrangements as set out in AB9.

B In the circumstances of this case I hold that the bank accepted the Wang convertible bearer bonds as security for the plaintiff's overdraft account knowing that such bonds were convertible bonds and that when so accepting the bonds the bank knew of the requirements for the timely and proper conversion of such bonds. The bank cannot therefore now be heard to say that its conduct in this case is in keeping with its usual course of business. In the circumstances the bank did not exercise due care C (1) in not taking the necessary steps to place itself in a position to ascertain when the notice of redemption was given by the Wang company and (2) thus disabling itself from informing the plaintiff of such notice which would have made it possible for him to convert the bearer bonds to registrable shares in the Wang company. The bank was thus in breach of its duty of care in respect of D the deposited Wang convertible bearer bonds to its customer the plaintiff.

The plaintiff says that had he redeemed the Wang bonds on 27 May 1983, the date of redemption, by E converting them to shares he would have received the sum of US\$84,650 being the value of the converted shares. As it was on 14 September 1983 he only received US\$56,445, the face value of the convertible Wang bonds. The plaintiff is now claiming US\$28,205 being F the difference in value of the converted shares and the face value of the Wang bonds.

On the question of damages the plaintiff has not produced evidence of the damages he now claims to have suffered, particularly as to what the value of the converted shares were at the relevant time. There will therefore be interlocutory judgment for the plaintiff on his claim with costs, the question of the assessment of the G damages suffered by the plaintiff is referred to the registrar. I direct that the damages suffered by the plaintiff shall be the difference of the value of the converted shares and the face value of the Wang convertible bonds.

H *Claim allowed.*

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

Reported by *Wong Kim Fatt*

I